

CIA set to seal its 'operational' files

ACLU aids agency in bid to erode FOIA

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The CIA is about to win a partial exemption from the federal Freedom of Information Act (FOIA). This exemption, freeing the agency from making public many of its operational files, will cripple the efforts of many who have relied on FOIA disclosures to monitor CIA political interference abroad and the progress of its covert surveillance. Furthermore the CIA has achieved this exemption with the aid of the American Civil Liberties Union (ACLU), supposedly a liberal protector of U.S. civil rights.

A controversial Reagan administration secrecy order has meanwhile been shelved due to congressional opposition.

John McMahon, deputy director of the CIA, said in recent House Intelligence Subcommittee hearings that significant numbers of secret agents had stopped providing information to his agency because they feared exposure under the FOIA.

"Foreign agents, some very important, have either refused to accept, or have terminated a relationship on the grounds that in their minds the CIA is no longer able to guarantee that they can be protected," McMahon testified.

No specific evidence was offered at the hearing, and McMahon provided no estimate of how many U.S. agents might have quit or refused to be recruited.

The House Intelligence Subcommittee is considering legislation that would exempt the CIA's "operational" files from FOIA search and review requirements. Operational files contain information on how the CIA gathers—and manufactures—intelligence around the world, and it is among the most critical forms

of information available to those resisting covert surveillance.

The CIA has lobbied for complete exemption ever since the 1974 amendments to the FOIA first opened CIA files to limited public scrutiny, on the grounds that publicity interferes with CIA intelligence gathering duties.

Opponents of the exemption have argued that if agents or informers fear exposure under the FOIA, it can only be because the CIA has not adequately explained existing law. Current FOIA provisions already limit access whenever the information sought would reveal the identity of informers or agents or place their lives in danger, or would interfere with law enforcement duties.

The CIA's efforts to gain complete exemption were unsuccessful until the ACLU agreed to negotiate a compromise partial exemption. This has now been passed by the Senate, and will probably pass the House as well, according to an aide to the House FOIA Oversight Committee.

The ACLU's actions on this issue have been widely denounced by other civil liberties and press groups, all of whom agree that the CIA should not get a complete exemption. Without ACLU aid, all agree, the CIA could not have won its point. According to the ACLU, however, its compromise bill was a necessary evil to prevent the CIA from winning an even stronger secrecy measure.

SECRECY ORDER SUSPENDED

On another front, the Reagan administration has been forced to suspend a controversial government secrecy order, after widespread congressional and public resistance.

National Security Directive 84 (NSD 84), issued by Reagan a year ago but temporarily delayed by Congress in November, allowed government agencies the widespread use of lie detector tests to identify the sources of leaks of classified material. It also allowed the government to demand lifetime censorship of the writings and conversations of government officials with access to classified information.

NSD 84 was seen as limiting debate on vital issues and violating constitutional rights while doing little to prevent leakage of classified information and still less to protect national security.

The General Accounting Office released a study of six agencies completed last year, concluding that only 21 of the 328 claimed unauthorized disclosures in the past five years had been released through former officials' writings or speeches. Only one or two of these could be said to have involved genuine intelligence secrets.

Even Richard Willard, the Justice Department official responsible for drafting the directive, conceded that the censorship program would be ineffective in preventing espionage or the unauthorized disclosure of sensitive information.

The unreliability of lie detector tests was another factor in congressional opposition to NSD 84. Polygraph test results are inadmissible in federal court for this reason. Even advocates of the polygraph admit that machines and operators can make mistakes, falsely branding innocent employees as liars. It was feared that this would increase if the use of lie detector tests was institutionalized.

It is also generally recognized that many documents have been labeled secret despite the fact that the information they contain pose no threat to national security and may instead be classified to cover up politically embarrassing information or proof of government illegalities.

The vast majority of "leaks" fall into this category. In fact, members of Congress often depend on such leaks to check on the activities of the executive branch.

NSD 84 has not been completely withdrawn, merely suspended, until a "bipartisan solution" can be worked out between Congress and the administration. Until that time, the public's right of access to vital information has been given a temporary reprieve.

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